

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Carayannis	Team: Squad #16	CCRB Case #: 201506961	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/14/2015 10:39 PM	Location of Incident: Devoe Avenue and East 177th Street	18 Mo. SOL 2/14/2017	Precinct: 48		
Date/Time CV Reported Tue, 08/18/2015 9:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 08/18/2015 9:22 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Mcknight	7955	955170	PBBX
2. SGT Frank Amill	02290	941345	PBBX
3. POM Michael Duggan	11111	954757	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Duggan	Abuse: PO Michael Duggan stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Richard Mcknight	Abuse: PO Richard Mcknight stopped the vehicle in which § 87(2)(b) was an occupant.	
C.SGT Frank Amill	Abuse: Sgt. Frank Amill stopped the vehicle in which § 87(2)(b) was an occupant.	
D.SGT Frank Amill	Abuse: Sgt. Frank Amill frisked § 87(2)(b)	
E.SGT Frank Amill	Abuse: Sgt. Frank Amill searched § 87(2)(b)	
F.POM Richard Mcknight	Abuse: PO Richard Mcknight searched the vehicle in which § 87(2)(b) was an occupant.	
G.SGT Frank Amill	Abuse: Sgt. Frank Amill threatened to arrest § 87(2)(b)	

Case Summary

On August 14, 2015, § 87(2)(b) was inside his black Honda Accord, when he was pulled over at East 177th Street and Devoe Avenue in the Bronx by PO Richard McKnight, Sgt. Frank Amill, and PO Michael Duggan, all from Patrol Borough Bronx (**Allegation A, B, and C**). § 87(2)(b) just prior to being pulled over, had pulled out of a parking space and made a U-turn. After he was stopped, officers asked him to step out of the vehicle and Sgt. Amill frisked him (**Allegation D**) and reached into his pocket removing a razor blade knife (**Allegation E**). PO McKnight searched his vehicle (**Allegation F**). PO McKnight instructed § 87(2)(b) to open his trunk and § 87(2)(b) refused. Sgt. Amill told him that he should open his trunk if he did not “want to come with them” (**Allegation G**). § 87(2)(b) opened the trunk. His knife was returned to him and he threw it in his trunk with his identifications. He was issued a summons for § 87(2)(b).

Video was collected for this incident, but none of the video was at an angle which showed the interaction between § 87(2)(b) and the officers.

Mediation, Civil and Criminal Histories

§ 87(2)(b) declined to mediate this complaint. As of September 23, 2015, no Notice of Claim has been filed with the New York City Comptroller’s office regarding this incident (Board Review 12). [§ 87(2)(b)] [§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party.
- PO Duggan has been a member of service for two years and this is the first complaint to which he has been a subject.
- PO McKnight has been a member of service for two years and he has not had any substantiated CCRB allegations. He has had one allegation of a frisk, one of a search, and one of stop pled against him, all of which were closed as complainant uncooperative.
- SGT Amill has been a member of service for nine years and has had one allegation of a frisk substantiated against him. He has had no other substantiated allegations pled against him.

§ 87(2)(g)

Findings and Recommendations

Officer identification

§ 87(2)(b) stated that the 6’1” tall officer with short black hair who approached the driver’s seat frisked and searched him. § 87(2)(g) However, all of the officers present stated that Sgt. Amill frisked and searched § 87(2)(b) § 87(2)(g)

§ 87(2)(b) stated that the 5’9” tall stocky officer who was older and who approached his passenger side, searched his vehicle. § 87(2)(g) However, all the officers interviewed agreed that solely PO McKnight searched § 87(2)(b)’s vehicle. § 87(2)(g)

Allegations not Pled

§ 87(2)(g)

Allegation A—Abuse of Authority: PO Michael Duggan stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B—Abuse of Authority: PO Richard McKnight stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation C—Abuse of Authority: Sgt. Frank Amill stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was parked when the officers first observed him. It is undisputed that § 87(2)(b) pulled out of the parking space and immediately made a U-turn, which § 87(2)(b) stated he was not certain if it was legal. § 87(2)(b) was summonsed for failure to use a turn signal when changing lanes. All of the officers agreed that his vehicle was stopped as he made an illegal U-turn and that when he pulled out of the parking spot he did not use his turn signal.

§ 87(2)(g)

Allegation D—Abuse of Authority: Sgt. Frank Amill frisked § 87(2)(b)

Allegation E—Abuse of Authority: Sgt. Frank Amill searched § 87(2)(b)

It is undisputed that § 87(2)(b) had a knife in his pocket. § 87(2)(b) PO McKnight, and PO Duggan all agree that § 87(2)(b)'s knife was clipped to the outside of his pocket with the knife resting on the inside.

PO Duggan stated that he observed the knife clip on the outside of his pocket and that he informed PO McKnight that the knife was there. He could not see any additional details of the knife.

PO McKnight confirmed that PO Duggan informed him of the knife, but PO McKnight did not see the knife until Sgt. Amill recovered it. PO McKnight informed Sgt. Amill of the knife and Sgt. Amill removed it from § 87(2)(b)'s pocket.

Sgt. Amill stated that PO McKnight informed him that § 87(2)(b) had a knife in his right front pocket. Sgt. Amill did not know how PO McKnight knew that § 87(2)(b) had a knife in his pocket and he did not observe this knife himself. Sgt. Amill did not possess additional information about what type of knife § 87(2)(b) possessed. Sgt. Amill frisked § 87(2)(b)'s pockets and waistband. He felt the knife in § 87(2)(b)'s pocket and he removed it from his pocket. He did not frisk or search anywhere else.

People v Terrance 101 A.D. 624 2012 (Board Review 10) An officer is permitted to remove a knife from an individual's pocket during a common law inquiry even though the officer had no reason to believe that the knife was illegal for personal safety.

People v Miranda 19 N.Y.3d. 912 2012 (Board Review 11) An officer is permitted to seize a knife from an individual during the course of a common law inquiry insofar as the seizure is not overly intrusive.

§ 87(2)(g)

Allegation F—Abuse of Authority: PO Richard McKnight searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was pulled over for a VTL violation. It is undisputed that § 87(2)(b) had a knife in his right front pocket and that he was removed from the vehicle and the knife was removed from his possession. It is undisputed that an officer entered his vehicle and searched the cab and backseat. § 87(2)(g)

It is undisputed that § 87(2)(b) was given the knife back, he was not arrested or summonsed for the knife, and that he was not reaching anywhere in the vehicle or making furtive movements prior to being removed from the vehicle. It is further not disputed that the blade of the knife was a razor blade and that it was a fold open knife. Other than the VTL and the knife, all of the officers stated that they did not suspect § 87(2)(b) of any other crime.

§ 87(2)(b) stated that officers searched his front and back seats and they searched his glove compartment, center console, and the trunk.

Sgt. Amill stated that § 87(2)(b) provided consent to search his vehicle, stating that he was clean and he had nothing inside. PO McKnight then searched § 87(2)(b)'s vehicle, but not the trunk. The knife that was recovered from § 87(2)(b) was a “gravity razor.” Sgt. Amill tested the knife by flicking his wrist to open it, which it opened. The blade was a razor blade. § 87(2)(b) could have been summonsed, but Sgt. Amill used his discretion to not summons him for the knife. Sgt. Amill did not contemplate arresting § 87(2)(b). Throughout the incident, § 87(2)(b) was not struggling, moving his body, or otherwise reaching about. He was upset, which he expressed by sucking his teeth and speaking in an elevated tone.

PO Duggan stated that either an officer asked § 87(2)(b) for consent to search his vehicle or § 87(2)(b) spontaneously gave consent to search his vehicle, but that § 87(2)(b) stated that officers could search his vehicle. § 87(2)(b) told the officers that he had more tools in a book bag in a book bag inside the vehicle. PO McKnight searched the vehicle, but not the trunk. PO Duggan did not believe that the knife was a gravity knife. Throughout the incident, § 87(2)(b) was upset, which he expressed by speaking in an elevated volume. He did not do anything with his body to express this anger.

PO McKnight stated that he did not seek consent to search the vehicle. He stated he searched the front seats and a book bag in the back seat of the car. He did not recall searching the center console and glove compartment. He searched here because § 87(2)(b) stated that he had additional knives in his book bag inside the vehicle. PO McKnight did not find additional knives in the book bag, but he did search it. PO McKnight did not believe that the knife was a gravity knife, as he believed § 87(2)(b) would have been arrested for its possession. Throughout the incident, § 87(2)(b) was apprehensive, which he expressed by stating that the stop and search of

his vehicle was ridiculous. He did not do anything with his body that made PO McKnight think he was angry.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) was not arrested for possession of a weapon and the knife was returned to him.

People v Alvarado, Misc. 3d 732 (Dist. Ct. Nassau. 2010) (Board Review 09) An officer is able to perform a warrantless search of a motor vehicle when he has probable cause to believe that an individual has committed a crime that is distinct from the traffic violation for which he was pulled over. An officer may also search a vehicle without warrant when he has reason to believe that the vehicle contains evidence of said crime or if he has reason to fear for his safety.

§ 87(2)(g)

Allegation G—Abuse of Authority: Sgt. Frank Amill threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that officers asked him to open his trunk. § 87(2)(b) said that he would not and Sgt. Amill told him that if he did not open his trunk he would have to come with them.

All of the officers interviewed denied any conversation about opening § 87(2)(b)'s trunk. All of the officers interviewed denied that § 87(2)(b) refused to open his trunk or that Sgt. Amill threatened to arrest him.

§ 87(2)(g)

Squad: 16

Investigator: _____ Lily Carayannis September 23, 2015
Signature Print Date

Pod Leader: _____

	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date